

04.10.2022

Appellant present in person.

Mr. Riaz Khan Paindakhel, learned Assistant Advocate General alongwith Muhammad Riaz Superintendent for respondents present.

Reply not submitted. Representative of respondents requested for time to submit reply; granted by way of last chance. To come up for reply/comments on 08.11.2022 before S.B at Camp Court, Swat.

**SCANNED
KPST
Peshawar**



(Rozina Rehman)
Member (J)
Camp Court Swat

08.11.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Several opportunities have been given to the respondents including the last chance for submission of reply/comments, however they have failed to submit reply/comments even today. Learned Assistant Advocate General is seeking further time for submission of reply/comments, therefore, last opportunity is further extended subject to payment of cost of Rs. 10000/-, failing which their right for submission of reply/comments shall be deemed as struck off. Adjourned. To come up for submission of reply/comments on 06.12.2022 before the S.B at Camp Court Swat.

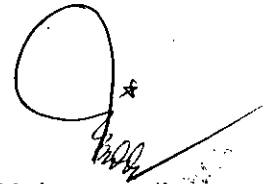


(Salah-Ud-Din)
Member (J)
Camp Court Swat

07.06.2022

Appellant in person present.

On the call of Khyber Pakhtunkhwa Bar Council, District Bar Association is observing strike today, therefore, learned counsel for the appellant did not appear before the court. Adjourned. To come up for preliminary hearing on 06.07.2022 before the S.B at camp court Swat.



(Mian Muhammad)
Member (E)
Camp Court Swat

06.07.2022

Appellant present through counsel.

Preliminary arguments heard and record perused.

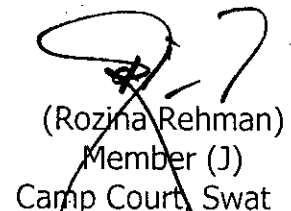
Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 02.08.2022 before S.B at Camp Court, Swat.

*Rs-500/-
Appellant Deposited
Security & Process Fee*

*A sufficient
18/7/22*

2-8-22

*due to summer vacation
the case is adjourned to 6-9-22 for the same*

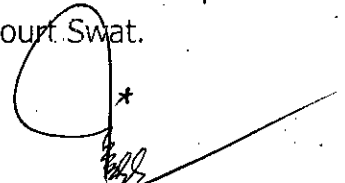


(Rozina Rehman)
Member (J)
Camp Court, Swat

06.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 04.10.2022 before S.B at Camp Court Swat.

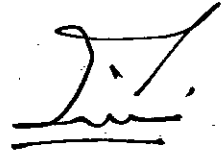


(Mian Muhammad)
Member (E)
Camp Court Swat

10.05.2022

Nemo for the appellant.

Previous date was changed on Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for preliminary hearing on 06.06.2022 before the S.B at Camp Court Swat.

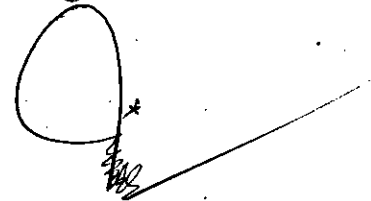


(Salah-Ud-Din)
Member (J)
Camp Court Swat

06.06.2022


Appellant in person present.

On the call of Khyber Pakhtunkhwa Bar Council, District Bar Association is observing strike today, therefore, learned counsel for the ~~appellant~~ did not appear before the court. Adjourned. To come up for preliminary hearing on 07.06.2022 before the D.B at camp court Swat.



(Mian Muhammad)
Member(E)
Camp Court Swat

07.02.2022 Tour is hereby canceled .Therefore, the case is adjourned
to 04.04.2022 for the same as before at Camp Court Swat.


Reader

04.04.2022 Junior to counsel for the appellant present.

He requested for adjournment as senior counsel is busy before august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. Adjourned. To come up for preliminary hearing on 09.05.2022 before S.B at Camp Court, Swat.



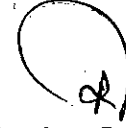
(Rozina Rehman)
Member (J)
Camp Court, Swat

09.05.2022 Due to non-availability of the Bench, the case is
adjourned to 10.05.2022 for the same as before.

Reader

04.10.2021

Junior of learned counsel for the appellant present and requested for adjournment on the ground that counsel for the appellant is not available today. Adjourned. To come up for arguments as per order sheet dated 27.07.2021 before the S.B on 06.12.2021 at Camp Court Swat.



(Rozina Rehman)
Member (J)
Camp Court, Swat

06.12.2021

Junior to counsel for appellant present.

He made a request for adjournment as senior counsel for appellant is not available today. Opportunity is granted. To come up for preliminary hearing on 07.02.2022 before S.B at Camp Court, Swat.



(Rozina Rehman)
Member (J)
Camp Court, Swat

27.07.2021

Appellant present in person.

This appeal seems to have been filed in continuation of previous Appeal No. 1511/2018 copy available on file as Annexure-C. According to the judgment dated 04.11.2019, on partial acceptance of the said appeal, the impugned order was set aside and reinstated the appellant into service with the direction to respondent department to conduct de-novo enquiry strictly in the mode and manner prescribed by Police Rules, 1975. The order dated 16.03.2020 was passed in the matter of denovo enquiry but as per head note of memorandum of appeal, the said order has not been challenged. Rather order dated 17.09.2020 has been challenged. In view of the said position, the question of maintainability of appeal is apt to arise. To come up for arguments on the point of maintainability on 04.10.2021 before S.B at camp court, Swat.




Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 4758/2021 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/04/2021	<p>The appeal of Mr. Abdul Kabir presented today by Mr. Muhammad Javed Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	04/06/2021	<p>This case is entrusted to S. Bench Peshawar. Notices be issued to appellant/counsel for preliminary hearing on 27 /07/2021.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 4758 /2021

**SCANNED
KPST
Peshawar**

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir Upper.....Petitioner

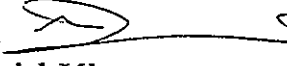
VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and
others Respondents

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5	Copy of the order dated 14/11/2018	A	11
6	Copy of the service appeal no. 1511 of 2018 along with order and judgment dated 04/11/2019	B	12-24
7	Copy of the finding report	C	25-27
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Kale
Appellant

Through Counsel 
Muhammad Javaid Khan
Advocate Supreme Court of
Pakistan
Office: Allah-o-Akbar Masjid,
College Colony, Saidu Sharif, swat
Cell: 0343-9607492

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2021

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir UpperPetitioner

VERSUS

- 1) Provincial Police Officer Government of Khyber
Pakhtunkhwa at Central Police Office (CPO) Peshawar
- 2) Deputy Inspector General of Police / Regional Police Officer
(RPO) Malakand Region at Swat
- 3) District Police Officer Dir Upper at Dir

.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF SERVICE
TRIBUNAL ACT READ WITH OTHER RELEVANT
PROVISIONS AGAINST THE ORDER DATED:
17/09/2020 OF THE DEPARTMENTAL AUTHORITY
RESPONDENT NO.3, WHEREBY THE PETITION /
REPRESENTATION OF THE APPELLANT WAS FILED /
NOT ALLOWED ON THE RECOMMENDATION OF
THE COMMITTEE ILLEGALLY, UNLAWFULLY AND
UNCONSTITUTIONALLY.**

PRAYER:

On acceptance of this service appeal the impugned order issued by Respondent No.3 Dated: 17/09/2020 may kindly be declared void ab initio, illegal, unlawful to the extent of not allowing all service back benefits and salaries of the intervening period (from 14/11/2018 to 04/11/2019) and respondents may be directed to grant all service back benefits along with the salaries of the intervening period.

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favor of appellant against respondents.

Respectfully Sheweth:

The appellant submits as under;

1. That the appellant was dismissed from service by respondent no. 3 vide OB No. 672 dated 14/11/2018. (Copy of the order dated 14/11/2018 is attached herewith as annexure "" A)
2. That the appellant then filed a service appeal no. 1511 of 2018 before this Honorable Tribunal which was decided on 04/11/2019. (Copy of the service appeal no. 1511 of 2018 along with order and

judgment dated 04/11/2019 are attached herewith as annexure "B")

3. That after the decision of this Honorable Court dated 04/11/2019 the denovo enquiry was conducted, which recommended that no allegation was proved against the appellant. (Copy of the finding report is attached herewith as annexure "C")
4. That vide order dated 16/03/2020, the respondent no. 3 after receiving the finding report refused to grant back benefits etc. to the appellant. (Copy of the order OB No. 240 dated 16/03/2020 is attached herewith as annexure "D")
5. That the appellant then submitted an appeal to respondent no. 2 through respondent no. 3. (Copy of the appeal dated 09/09/2020 is attached herewith as annexure "E")
6. That the respondent no. 3 instead of forwarding the said appeal departmental appeal of the appellant to respondent no. 2, formed a committee vide OB No. 734 dated 09/09/2020. (Copy of the OB No. 734 dated 09/09/2020 is attached herewith as annexure "F")
7. That the said committee then submitted his finding report on 16/09/2020 to respondent no. 3. (Copy of

the finding report dated 16/09/2020 is attached herewith as annexure "G")

8. That the respondent no. 3 instead of passing any appropriate order after the receipt of the finding report, only wrote words "Seen" on 17/09/2020, which were never communicated to the appellant, which is apparent from the face of the said paper.
9. That the appellant came to know about the said process a few days back, hence this service appeal is filed against the said void, illegal, unlawful and unconstitutional proceedings conducted by the respondent no. 3 and his nominated committee inter alia on the following grounds.

GROUND:

- i) That no speaking order has been passed by the respondent no. 3 in respect of the grievance of the appellant.
- ii) That formation of committee on the departmental appeal of the appellant dated 09/09/2020, instead of forwarding the appeal of the appellant by the respondent no. 3 to the office of respondent no.2 is void ab-initio, nullity in the eye of law and against the dictates of Article 4 & 10(a) of the Constitution of Islamic Republic of Pakistan, 1973.

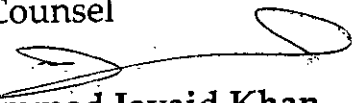
- iii) That the only ground available in cases for refusal of salaries of the intervening period and other benefits is, to see whether the requesting officials/ officers has served anywhere? In the present case the appellant has been declared innocent in the denovo enquiry and there is nothing on the record to show that he has served anywhere in the intervening period. (14/11/2018 to 04/11/2019)
- iv) That the enquiry committee consisting of DSP Headquarter Dir Upper BPS-16, ASI Legal BPS 11, Pay Officer BPS 16 were not competent to conduct any enquiry against then petitioner who is serving now in BPS 16 as Computer operator.
- v) That other grounds not specifically raised will be argued with the permission of this Honorable Tribunal at the time of arguments.
10. That this appeal is being filed against the order dated 17/09/2020, hence this Honorable Tribunal has got the jurisdiction and no limitation against the void order. As the impugned order is void ab initi, illegal, unlawful order hence no limitation runs against such order.

It is therefore humbly prayed that On acceptance of this service appeal the impugned order issued by Respondent No.3 Dated: 17/09/2020 may kindly be declared void ab initio, illegal, unlawful to the extent of not allowing all service back benefits and salaries of the intervening period (from 14/11/2018 to 04/11/2019) and respondents may be directed to grant all service back benefits along with the salaries of the intervening period.

Any other remedy which is just, appropriate and efficacious may also be awarded in favor of the appellant please.


Appellant

Through Counsel


• Muhammad Javaid Khan
Advocate Supreme Court of
Pakistan

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2021

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir UpperPetitioner

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and
others Respondents

AFFIDAVIT

I, Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir,
District Dir Upper , do hereby solemnly affirm and declare on oath
that all the contents of this Service Appeal are true and correct to the
best of my knowledge and belief, and nothing has been concealed
from this Honorable Court.

Identified by,



Muhammad Javaid Khan
Advocate Supreme Court of Pakistan

DEPONENT


Abdul Kabir

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2021

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir Uppe.....Petitioner

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and
others Respondents

ADDRESSES OF THE PARTIES

ADDRESSES OF THE APPELLANT

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir Upper

CNIC: 15701-43 68390-3

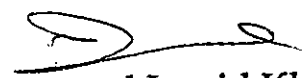
Cell: 0315-2233884

ADDRESS OF THE RESPONDENTS

- 1) Provincial Police Officer Government of Khyber Pakhtunkhwa
at Central Police Office (CPO) Peshawar
- 2) Deputy Inspector General of Police / Regional Police Officer
(RPO) Malakand Region at Swat
- 3) District Police Officer Dir Upper at Dir


APPELLANT

Through Counsel


Muhammad Javaid Khan
Advocate Supreme Court of
Pakistan

**BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR**

C.M No. _____ of 2021

In

Service Appeal No. _____/2021

Abdul Kabir (KPO) S/o Abdul Jalil R/o Gandigar, Tehsil Dir, District
Dir Uppe.....Petitioner

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and
others Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

The applicant / appellant submits as under:-

1. That the above Service appeal has been filed before this Hon'ble Tribunal, which is fixed today for preliminary hearing.
2. That the contents of the above mentioned Service Appeal along with the contents of the annexures may be considered as an integral part of this application.
3. That there is no limitation runs against the impugned order dated 17/09/2020 inter alia on the following grounds.

Grounds:

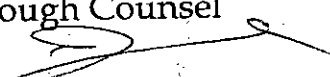
- i. That the original proceedings and order Dated: 17/09/2020 are void abinitio.

- ii. That no limitation runs against a void abinitio order, in this regard wisdom can be drawn from SCMR 2007 Page 834. (Copy of the SCMR 2007 Page 834 is attached)
- iii. That condonation in such like cases has been allowed by law of limitation and precedents of superior courts.
- iv. That any other grounds will be raised with the permission of this Honorable Court at the time of arguments.

It is therefore respectfully prayed that on acceptance of this application an order prayed for may be passed.

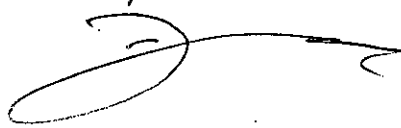
Any other remedy which is just, appropriate and efficacious may also be awarded in favor of Appellant please.


APPELLANT
Through Counsel


Muhammad Javaid Khan
Advocate, Supreme Court of Pakistan

Affidavit:

It is stated on oath that contents of this application are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Hon'ble Court.

identif


Deponent

Abdul Kabir

(11)

Annexure A

OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR

ORDER:-

This order is passed on the Departmental Enquiry conducted against Constable Abdul Kabir No. 1462/KPO while posted in PAL Office Upper Dir, On the sources of information, necessary legal action was taken against accused Bakht Bacha a shopkeeper in Sherdil Chowk Main Bazar Dir. who was issuing bogus tokens of Driving Licenses to the general public. In this connection an enquiry u/s 156(3) PS Dir was initiated; during process of enquiry the alleged person disclosed during statement u/s 164/161 Cr.PC that he has given 3,00,000/- rupees to Constable Abdul Kabir No.1462 /KPO for driving licenses, Bakht Bacha also produced (02) DLs to the Enquiry Officer and stated that the same DLs have been provided by Constable Abdul Kabir No. 1462/KPO, 01 DL was found incorrect due to picture of inappropriate person. After a detailed enquiry conducted u/s 156(3), it was found during process of enquiry that you Abdul Kabir No. 1462 Ex-KPO Traffic Branch have used govt: Machinery for Bogus Licenses. After getting opinion from DPP Upper Dir, a proper case vide FIR No. 41, dated 12.01.2018 U/S 419/420/468/471/167 PPC PS Dir was been registered against him.

In order to initiate proper Departmental Enquiry. Mr. Shahi Bakht Khan SIDPO Kohistan was appointed as Enquiry Officer. The Enquiry Officer in its finding report stated that the defaulter FC was involved in the above captioned case and found guilty.

On the receipt of the finding report and other connected papers the same were perused, a Final Show Cause Notice vide this office Memo: No. 2213/SB, dated 09.07.2018 was issued upon the delinquent official and full opportunities of hearing were given to the delinquent official. He was called in the presence of OI of the case but failed to explain their innocence and their guilty was proved behind any shadow of doubt.

On the recommendation enquiry officer and perusal of all enquiry papers, the delinquent Constable Abdul Kabir No. 1462/KPO is hereby dismissed from police service.

Order announced.

OB No. 672

Dated: 14 - 01 - 2018.

CTC
G

M.F.
District Police Officer
Dir Upper.

(12)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1511 /2018

Abdul Kabeer (No.1462/KPO) Son of Abdul Jalil Resident of
Gandigar, Tehsil Dir District Dir UpperAppellant

VERSUS

- 1) Provincial Police Officer Government of Khyber
Pakhtunkhwa at Central Police Office (CPO) Peshawar
- 2) Deputy Inspector General of Police / Regional Police Officer
(RPO) Malakand Region at Swat
- 3) District Police Officer, Dir Upper at Dir.

GTR
/

.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF SERVICE
TRIBUNAL ACT READ WITH OTHER RELEVANT
PROVISIONS AGAINST THE FINAL ORDER
NO.12229/E, DATED: 18/12/2018 OF THE APPELLATE
AUTHORITY / RESPONDENT NO.2, AGAINST THE
ORDER OB NO. 672 DATED: 14/11/2018 OF
RESPONDENT NO.3, WAS FILED / REJECTED.

PRAYER:

On acceptance of this service appeal the impugned orders
issued by Respondent No.2 & 3 Dated: 18/12/2018 and

(13)

14/11/2018 respectively, may kindly be declared illegal, unlawful and unconstitutional, and the Appellant may be reinstated into service with all back benefits including the intervening period etc.

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favor of Appellant against Respondents.

Respectfully Sheweth:

The Appellant submits as under;

1. That the appellant was appointed / enrolled as Constable Computer Operator on 11/01/2011: (Copy of OB No. 34, Appointment Order Dated: 11/01/2011 is attached herewith as annexure "A").
2. That the Appellant performed his duties for the last seven (7) years honestly, bravely and to the entire satisfaction of his superior officers.
3. That on 12/01/2018, an FIR No. 41 Under Section 419/420/468/471/167 PPC Police Station Dir, District Dir Upper was registered against the Appellant and others illegally and mala fidely. The said case is now pending before the court of Civil Judge / Judicial Magistrate-II at Dir, in which next date of hearing is 22/12/2018. (Copy of FIR along with copies of the case pending before the Civil Judge /

14
B

Judicial Magistrate-II at Dir are attached herewith as annexure "B & C").

4. That in the meanwhile Mr. Shahi Bakht Khan, SDPO Kohistan was appointed as Enquiry Officer, who after conducting the enquiry submitted his Finding Report Dated: 14/03/2018. (Copy of Finding Report Dated: 14/03/2018 along with whole record is attached herewith as annexure "D").
5. That after receiving the Enquiry / Finding Report, the Respondent No. 3 passed a dismissal order of the Appellant vide OB No. 672, Dated: 14/11/2018. (Copy of OB No. 671 Dated: 14/11/2018 is attached herewith as annexure "E").
6. That the Appellant then filed a Departmental Appeal before Respondent No. 2 on 16/11/2018, which was dismissed vide order No. 12229/E, Dated: 18/12/2018. (Copies of Departmental Appeal and Order Dated: 18/12/2018 are attached herewith as annexure "F").
7. That the impugned orders Dated: 18/12/2018 & 14/11/2018 of Respondents No.2&3 are illegal, unlawful and unconstitutional inter alia on the following grounds amongst others.

C.T. 0
14

GROUND:

- i) That the impugned orders Dated: 18/12/2018 & 14/11/2018 respectively of Respondents No.2&3 are illegal, unlawful and unconstitutional.
- ii) That the Enquiry Officer did not bother to call the Computer Expert / Forensic Expert for detecting the period during which the alleged forgery was made, despite the repeated requests of the Appellant. It is pertinent to mention here that by making a Back Up process in the concerned computer by an expert could easily reveal the exact time of forgery. However, this Honorable Court can depute an expert for the same. In this regard, an application is recently submitted before the Respondent No.3 for deputing the expert in order to do complete justice.
- iii) That according to the Enquiry and Finding Report the alleged forgery was done in the year 2017, whereas the Appellant was posted in the Licensing Branch from 12/01/2011 to 29/12/2015 and onward from 29/12/2015 the Appellant was serving as Verification Clerk till his suspension order on 27/12/2017. (Copy

[Handwritten signature]

(S) (b)

of the posting card is attached herewith as annexure "G").

- iv) That the present Traffic Clerk namely Abdul Hameed has hacked the Appellant's User ID and its password, which he uses for his unlawful actions. In this regard, a learner permit is issued from the Appellant's User ID to a person namely Rafiq Ullah Son of Gul Sher Resident of Bibyawar, Dir Upper Dated: 25/10/2018 in the name of the appellant. (Copies of learner permits issued from Appellant's User ID are attached herewith as annexure "H").
- v) That the enquiry conducted by the SDPO Kohistan was biased and based on mala fide for the reason that in the alleged forgery the then Motor Licensing Authority (MLA / DSP) namely Zaffar Khan and one License Clerk / Traffic Clerk namely Mirza Rahmat were involved in the same.
- vi) That the Enquiry Officer has also recommended for pending the decision of the Departmental Proceedings against the Appellant till decision of the competent court in the criminal case vide his finding report
- A.C.

Dated: 14/03/2018, but the Respondent No.3 did not bother to give his reasons in the dismissal order issued so urgently.

vii) That a criminal case in respect of the alleged forgery is pending trial in the court of Civil Judge / Judicial Magistrate-II, at Dir, in which no evidence has been recorded as yet, hence on this score alone both the impugned orders are liable to be set aside.

viii) That the impugned enquiry, proceedings, orders etc have been conducted and issued in gross violation of the Rule-2(iii) of Police Rule 1975 etc.

ix) That the impugned orders have been passed in violation of Article 4, 10(A) and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

x) That other grounds not specifically raised will be argued with the permission of this Honorable Tribunal at the time of arguments.

8. That this appeal is being filed against the orders Dated: 18/12/2018 of Respondent No.2, hence this Honorable Tribunal has got the jurisdiction and this appeal is well within time.

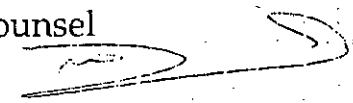
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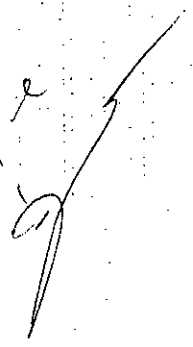
It is therefore humbly prayed that on acceptance of this service appeal the impugned orders issued by Respondent No.2 & 3 Dated: 18/12/2018 and 14/11/2018 respectively, may kindly be declared illegal, unlawful and unconstitutional, and the Appellant may be reinstated into service with all back benefits including the intervening period etc.

Any other remedy which is just, appropriate and efficacious may also be awarded in favor of the appellant please.

Appellant
Abdul Kabeer

Through Counsel


Muhammad Javaid Khan
Advocate Supreme Court
of Pakistan

CT


(8) (19)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2018

Abdul Kabeer (No.1462/KPO) Son of Abdul Jalil Resident of Gandigar, Tehsil Dir District Dir UpperAppellant

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and others Respondents

AFFIDAVIT

I, Abdul Kabeer (No.1462/KPO) Son of Abdul Jalil Resident of Gandigar, Tehsil Dir District Dir Upper, do hereby solemnly affirm and declare on oath that all the contents of this Service Appeal are true and correct to the best of my knowledge and belief, and nothing has been concealed from this Honorable Court.

Identified by,

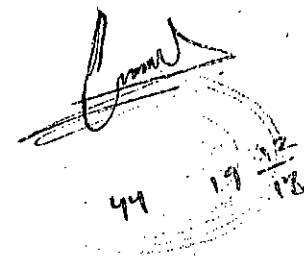
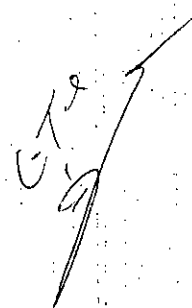


Muhammad Javaid Khan
Advocate Supreme Court
of Pakistan

DEPONENT



Abdul Kabeer



(9) (20)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2018

Abdul Kabeer (No.1462/KPO) Son of Abdul Jalil Resident of
Gandigar, Tehsil Dir District Dir UpperAppellant

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa and
others Respondents

ADDRESSES OF THE PARTIES

ADDRESS OF APPELLANT

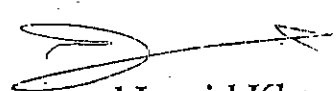
Abdul Kabeer (No.1462/KPO) Son of Abdul Jalil Resident of
Gandigar, Tehsil Dir District Dir Upper
CNIC: 15701-4368390-3

Cell: 0315-2233884

ADDRESSES OF RESPONDENTS

- 1) Provincial Police Officer Government of Khyber
Pakhtunkhwa at Central Police Office (CPO) Peshawar
- 2) Deputy Inspector General of Police / Regional Police Officer
(RPO) Malakand Region at Swat
- 3) District Police Officer Swat Dir Upper at Dir.

APPELLANT
Through Counsel

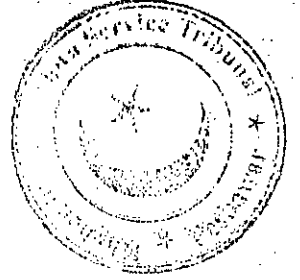

Muhammad Javaid Khan
Advocate Supreme Court
of Pakistan

KPO 1948
(21)

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

SERVICE APPEAL NO. 1511/2018

Date of institution ... 20.12.2018
Date of judgment ... 04.11.2019



Abdul Kabcer (No. 1462/KPO) Son of Abdul Jalil
Resident of Gandigar, Tehsil Dir District Dir Upper.

... (Appellant)

VERSUS

1. Provincial Police Officer Government of Khyber Pakhtunkhwa at Central Police Office (CPO) Peshawar.
 2. Deputy Inspector General of Police/Regional Police Officer (RPO) Malakand Region at Swat.
 3. District Police Officer Swat Dir Upper at Dir.
- ... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL
ACT READ WITH OTHER RELEVANT PROVISIONS AGAINST
THE FINAL ORDER NO.12229/E. DATED 18.12.2018 OF THE
APPELLATE AUTHORITY/RESPONDENT NO. 2. AGAINST THE
ORDER OB NO. 672. DATED: 14.11.2018 OF RESPONDENT NO. 3.
WAS FILED/REJECTED.

Mr. Muhammad Javaid Khan, Advocate.

For appellant,

Mr. Riaz Ahmad Paindakheil, Assistant Advocate General

For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith M/S Rasheed Khan, DSP (Legal) and Umer Khitab, ASI for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service by the competent authority vide order dated 14.11.2018 on the

4.11.2019
Mr. Riaz Ahmad
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

allegations that one Bakht Bacha a shopkeeper in Sherdil Chowk Bazar Dir was issuing bogus tokens of Driving Licenses to the general public and during inquiry under section 156(3) PS Dir initiated in this regard wherein it was found that the said Bakht Bacha has given 3,00,000/- to the appellant for driving licenses and has also used government machinery for bogus licenses. The appellant filed departmental appeal on 26.11.2018 which was rejected vide order dated 18.12.2018 hence, the present service appeal on 20.12.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was imposed major penalty of dismissal from service on the aforesaid allegations. It was further contended that neither proper inquiry was conducted nor the appellant was provided opportunity of cross examination nor he was provided opportunity of personal hearing and defence. It was further contended that the appellant has taken plea in the reply of charge sheet to competent authority that the services of computer expert/forensic expert be taken so that to dig out/detect the period during which the alleged forgery was made but the inquiry officer did not bother to call the computer expert/forensic expert for the said purpose. It was further contended that the competent authority was also required to issue show-cause notice alongwith copy of inquiry report but the competent authority has also not dispatched copy of inquiry report with the show-cause notice and the show-cause notice has also been issued under the Removal from Service (Special Powers) Ordinance 2000 which has already been repealed, therefore, the appellant was condemned unheard which was rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

6/12/2019

Handwritten initials/signature

ATTESTED

EXAMINER
Hyder Bakht Makhdoom
Service Tribunal,
Peshawar

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that that appellant was serving in Police Department. He was imposed major penalty of dismissal from service on the aforesaid allegations. It was further contended that a proper inquiry was conducted, the appellant was fully associated in the inquiry proceeding, statement of witnesses were recorded and the appellant was provided opportunity of cross examination. It was further contended that after inquiry report, the appellant was also issued a copy of show-cause notice but the appellant could not satisfy the competent authority. It was further contended that criminal case was also registered against the appellant therefore, the competent authority has rightly imposed major penalty of dismissal from service after fulfilling all the codal formalities and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service on the aforesaid allegations. A criminal case was also registered against the appellant alongwith others but the Trial Court acquitted the appellant alongwith other co-accused vide order dated 20.09.2019. The record further reveals that the departmental proceeding was also initiated against the appellant on the aforesaid allegations. The inquiry officer has also recorded ^{the} statements of some witnesses during the inquiry proceeding but the appellant was not provided opportunity of cross examination rather the inquiry officer has himself put some questions on the aforesaid witnesses therefore, the appellant was not provided opportunity of defence. Moreover, the competent authority has also issued show-cause notice but the copy of inquiry report was not dispatched/handed over to the appellant with the said show-cause notice therefore, the inquiry was not conducted in the mode and manners prescribed

W.A. Am...
4/11/2019

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TESTED
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under the Police Rules, 1975 and the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service with the direction to respondent-department to conduct de-novo inquiry strictly in the mode and manner prescribed by Police Rules 1975 with further direction to consider the plea of the appellant taken by him in the reply of charge sheet regarding computer expert/forensic expert for detecting the period during which the alleged forgery was made and also provide opportunity of cross examination as well as hand over copy of inquiry report alongwith show-cause notice within the period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED:
04.11.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

Hussain Shah
(HUSSAIN SHAH)
MEMBER
CAMP COURT SWAT

certified
[Signature]

Certified to be true copy

[Signature]
Sub-Inspector
Service Tribunal
Peshawar

Date of Filing of Petition 22-11-19
 Number of Petition 1600
 Chapter No. 18-00
 Ugent
 Title 18-00
 Name of Applicant
 Date of issue of order of this 11-12-19
 Date of Filing of App. 11-12-19

27/69 25

Annex C

FINDING REPORT

DENOVO DEPARTMENTAL ENQUIRY AGAINST SHAH JULLAH KPO NO. 303 AND ABDUL KABIR KPO NO. 28

Sir, The brief facts behind instant enquiry are that the delinquent officials while posted as KPO in Driving License Branch DPO Officer Upper Dir were proceeded against departmentally on the allegations of, "on the source of information necessary legal action was taken against accused Bakht Bacha a shopkeeper in Sherdil Chowk Main Bazar Dir, who was issuing bogus tokens of Driving Licenses to the general public. In this connection an enquiry u/s 156(3)-CrPc PS Dir was initiated, during process of enquiry conducted u/s 156(3)-CrPc it was found that constable/KPO has used Govt: Machinery for bogus licenses. After getting opinion from DPP Dir Upper, proper cases vide FIR No. 41 dated 12.01.2018 u/s 419/420/468/471/157-PPC PS Dir has been registered against them. A preliminary enquiry was also conducted through SP Investigation Upper Dir, during course of enquiry it was found that you have uploaded (240) fake driving licenses in the online database which were not found on the record of conversion/Renewal registers. The Enquiry Officer also further reported that you have also violated the Police Rules 14-8 and submitted false applications against your senior officers. So this amounts to gross misconduct on your part"

An Enquiry Officer was nominated by the competent authority which conducted departmental proceedings against the delinquent Officials on the above allegations and held them guilty. Therefore, the competent authority, on the recommendation of Enquiry Officer awarded both delinquent Officials major punishment of dismissal from service vide OB No.671 and OB No. 672 dated 14-11-2018.

The delinquent officials filed departmental appeal which was examined and filed by the appellate authority. Subsequently, the delinquent Officials approached to KP Service Tribunal Peshawar vide Service Appeal No. 1510/2018 and No. 1511/2018.

The honorable Service Tribunal after proper hearing partially accepted the appeal, set aside the impugned order and re-instated them into service with directions to the department to conduct denovo enquiry strictly in accordance with Police Rules 1975 and

CPC
Advocate

considered the plea of the delinquent officials taken by them in their respective replies regarding computer expert/forensic expert for detecting the period during which the alleged forgery was made and also provide opportunity of cross examination

In the light of order the court both of them were re-instated in service for the purpose of instant denovo enquiry. Afresh Charge Sheets statement of allegations were issued by the authority to the delinquent officials and the undersigned was nominated as Enquiry Officer.

The delinquent Officials submitted their respect replies to the Charge Sheet and statement of allegations in which they denied the allegations leveled against them and claimed them innocent.

Therefore, I have conducted proper departmental proceedings. The following witnesses appeared before the undersigned whose statements were recorded in the presence of delinquent officials and they were given lawful opportunities of cross examination.

1. Mr. Zafar Khan, ex-DSP HQrs: Dir Upper
2. Nawab Zada s/o Sultan r/o Ganshal Dir Upper
3. Muhammad Ishaq s/o Dawlat Zarin r/o Ganshal Dir Upper
4. Abdul Hamid APO DPO office Dir Upper

The witnesses relied upon their previous statements recorded by the Enquiry Officer during the previous enquiry proceedings, however their fresh statements were recorded.

The witnesses namely Habib Zada s/o Sherin r/o Kateer, Farman Ali s/o Taleh Zar r/o Rokhan, Ijaz s/o Bakht Biland, r/o Shedyal whose statements were also recorded by the Enquiry Officer during the course of previous enquiry were summoned to join instant enquiry but were not available. As per report of local Police of PS Dir, PS Wari and PS Sheringal that witness Habib Zada has gone to Karachi while the remaining two have gone to abroad for their livelihood and not available. Therefore, their previous statements were confronted and relied upon.

That in the light of directions of honorable Tribunal the relevant alleged forged documents/ record was got examined from computer expert Mr. Muhammad Saleem Deputy Director IT CPO deputed by the Director IT CPO Peshawar. The report

CTC
Advocate

20/11/2015


(27)

of computer expert with relevant record positively received. In the light of opinion of IT expert the record provided by him was got checked for matching with manual record from traffic clerk. As per report of traffic clerk DPO office Upper Dir, the computer record provided by the IT expert from Centralized Data Base either fresh or conversion were not matched with manual record out of 272 except license No. 117000020265 and No. 117000020459, hence these are forged and fake, moreover all these fake driving licenses were entered in computer data base from 19.02.2016 to 10.08.2017 during the period of delinquent official namely Shafi Ullah who being KPO was responsible for such entries. While Mr. Abdul Kabir was not posted as KPO during this period. The statements of delinquent officials were also recorded in which they also denied the allegation. During the course of enquiry all the lawful opportunities of defense were afforded to them and associated them with whole the proceedings.

According to the report of computer expert and Traffic Clerk DPO Office except 02 all the Driving Licenses mentioned in Annex-V either fresh or conversion does not match with official record i.e registers, which transpires that these Driving Licenses are fake and forged and were entered in the Data Base during the period of posting as KPO of delinquent official Shafi Ullah who was held responsible for such fake entries.

Keeping in view the above the delinquent official Shafi Ullah in whose period of posting as KPO such fake Driving Licenses were entered in Computer Data Base System held guilty of the charges leveled against him and recommended for appropriate punishment while the allegation could not prove against Abdul Kabir.

Submitted please.


Superintendent of Police,
Investigation, Upper Dir.

CTC
Durr
Advocate

(28) A

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OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR

ORDER

This order is passed on the de-novo enquiry conducted against Constable Abdul Kabir No. 286/FC (previous No. 1462/FC) while posted in Police Lines.

In the light of judgment order of Honorable Service Tribunal Peshawar at Camp Court Swat dated 04.11.2019 vide appeal No. 1511/2018 filled the delinquent official. He was re-instated into service vide this office OB No. 1050, dated 09.12.2019. Mr. Javeed Ahmad Chughtai, SP Investigation Upper Dir (District Complaint Officer) tasked to conduct de-novo enquiry regarding allegations, charges and back benefits vide this office memo: No. 207-08/SB, dated 13.01.2020 on the directions of CPO, Peshawar memo: no. 40-42/CPO, IAB, dated 03.01.2020.

During course of enquiry, the enquiry officer called the defaulter official and recorded his statement; his previous enquiry along with other connected papers have also been perused. It has been found that the defaulter official has misused Government Machinery for bogus driving licenses and dismissed from service. Therefore, his case was not found fit for back benefits.

On the receipt of the finding report, the defaulter official were called in Orderly Room and heard in person. The enquiry papers along-with connected papers were perused; on the recommendation of the Enquiry Officer, his **de-novo enquiry** for back benefits is filed. His remaining pay is released.

Order announced.

OB No. **240**

Dated:- **16/03/2020.**

Sd/-
District Police Officer
Dir Upper.

To The worthy Regional Police Officer,
Malakand Region, Saidu Sharif, Swat.

Through PROPER CHANNEL

Subject APPEAL FOR THE GRANT OF BACK BENEFITS

Respected Sir,

It is submitted that:-

1. The appellant while serving as a Constable Computer Operator was dismissed from service vide OB No.672, dated 14/11/2018 by the then District Police Officer, Dir Upper.
2. After departmental remedy the appellant filed Service Appeal No.1511/2018 before the August Forum of Service Tribunal, Khyber Pakhtunkhwa, which was decided on 04/11/2019 and re-instated into service the appellant with the directions to conduct denovo departmental proceedings into the allegations levelled against the appellant and the back benefits shall be decided/granted subject to the outcome of said enquiry process.
3. The denovo departmental proceedings were conducted through Superintendent of Police, Investigation, Dir Upper.
4. During the denovo departmental enquiry proceedings the Enquiry Officer found the appellant innocent of the allegations levelled in the departmental enquiry proceedings and submitted his finding report accordingly.
5. The then District Police Officer, Dir Upper while deciding the denovo departmental enquiry proceedings filed the grant of back benefits vide OB No.240, dated 16/03/2020 and released the remaining pay of the appellant.
6. Therefore, in the light of finding of the Enquiry Officer (SP, Investigation, Dir Upper) the then District Police Officer, Dir Upper allowed the appellant to take over charge in the upgraded post of Computer Operator (BS-16)

Keeping in view of the above facts and in the light of judgment of August Forum of Service Tribunal, Khyber Pakhtunwa as well as the finding report of Enquiry Officer in which the appellant was found innocent and also permitted to take over charge in upgraded post of Computer Operator (BS-16), all the back benefits of intervening period including taking of charge from admissibility date of the said upgraded post may very kindly be accorded and obliged please.

Yours Obediently,

Kato 9.9.2020

(ABDUL KABIR)
Computer Operator (BS-16)
DPO office, Dir Upper

*Sr Legal
Please discuss.*

*120-
27/10*

OFFICE OF THE DPO
By: 5864
Date: 27-10-2020
UPPER DIR

30

Annexure "F"



**OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR**

Ph: 0944-880531 Fax: 0944-880192
Email: dpodirupper@gmail.com

OB No. 734 /Appeal, Dated Dir Upper the 9/13, 2020.

CONSTITUTION OF COMMITTEE

A Committee of the following officers is hereby constituted with the direction to examine the case of Computer Operator Abdul Kabir BPS-16 for back benefits and decide as to whether he is entitled for all back benefits or other wise

- ✓ 1. DSP HQrs Upper Dir
- 2. Pay Officer Local Office
- 3. ASI Legal

Committee Members will submit their report within 03 days

**District Police Officer,
Upper Dir**

No. 4475 /EB/Appeal, dated Upper Dir 09/13/2020

فائنڈنگ رپورٹ۔

جناب عالی!

تحریر ہے۔ کہ دفتر جناب DPO صاحب سے چھٹی انگریزی نمبری 734 مورخہ 09.09.2020 بمعہ درخواست عبد الکبیر KPO موصول ہو کر پایا گیا۔ کہ جناب DPO صاحب نے DSP ہیڈ کوارٹر، پے آفیسر، ASI لیگل پر مشتمل کمیٹی تشکیل کر کے عبد الکبیر KPO کو (Back Benefit) کے بابت تین یوم کے اندر رپورٹ پیش کرنے کا حکم فرمایا۔ اندریں بارہ دفتر OASI برانچ سے عبد الکبیر KPO کے سابقہ انکوائریاں کے فائنڈنگ رپورٹ حاصل کر کے پایا گیا۔ کہ عبد الکبیر KPO کے خلاف شاہی بخت DSP سرکل کوہستان نے انکوائری کر کے عبد الکبیر KPO کو انکوائری میں قصور وار ٹھہرا کر بحوالہ OB نمبر 672 مورخہ 14.11.2018 کو محکمہ پولیس سے درخواست کیا گیا۔ مذکورہ نے سروس ٹریبیونل پشاور کیمپ کورٹ سوات کے حکم پر بحال ہو کر بحوالہ OB نمبر 1050 مورخہ 09.12.2019 کو بحالی کا حکم صادر ہو کر (De-nove) انکوائری جناب SP صاحب انوسٹی گیشن دیر بالا کو حوالہ ہوئی۔ جناب SP صاحب انوسٹی گیشن نے انکوائری مکمل کر کے جناب DPO صاحب کو پیش کی۔ جناب DPO صاحب نے بحوالہ OB نمبر 240 مورخہ 16.03.2020 کو عبد الکبیر KPO کو (Back Benefit) نہ دینے اور تنخواہ شروع کرنے کا حکم صادر فرمایا۔ اب عبد الکبیر KPO کا DPO صاحب کو (Back Benefit) کیلئے درخواست کرنا درست نہیں۔ کیونکہ DPO صاحب دیر بالا نے مذکورہ کو (Back Benefit) کا حقدار نہ سمجھ کر درج بالا حکم صادر فرمایا ہے۔ رپورٹ مرتب ہو کر بمراد مناسب صدور حکم پیش خدمت ہے۔

Seen

WZ

DPO/Dir (C)

17/9/2020

ڈی ایس پی، ہیڈ کوارٹر دیر بالا۔
16/09/2020

ASI لیگل دیر بالا۔
16/09/2020

پے آفیسر دیر بالا۔
16/9/20

WZ
16/09/2020

2007 S C M R 834

[Supreme Court of Pakistan]

Present Rana Bhagwandas and Hamid Ali Mirza, JJ

ABDUL GHANI---Petitioner

Versus

Mst. SHAHEEN and others---Respondents

Civil Petitions Nos.90-K and 91-K of 2003.

(a) Civil Procedure Code (V of 1908)---

---Ss. 115, 96, & O.XLIII, R.1---Revision would not lie, when an appeal lies.

(b) Limitation---

---Order passed in violation of mandatory provisions of law---Validity---Limitation--No period of limitation would run for challenging such order.

(c) Civil Procedure Code (V of 1908)---

---Ss. 115, 96, 151 & O.XLIII, R.1---Order decreeing suit on basis of application under S.151, C.P.C.---Revision would be competent against such order for same being not appealable.

Abrar Hassan, Advocate Supreme Court and K.A. Wahab, Advocate-on-Record for Petitioner.

Muhammad Sharif, Advocate Supreme Court and Suleman Habibullah for Respondents.

ORDER

HAMID ALI MIRZA, J.---These two civil petitions for leave to appeal are directed against judgment dated 27-11-2002 in Civil Revision Applications Nos.66 and 67 of 1995 passed by learned Single Judge of the High Court of Sindh, Karachi, whereby both civil revisions were allowed thereby common order, dated 12-5-1993 in Civil Suits Nos.1091 and 1275 of 1990 passed by Vth Senior Civil Judge, Karachi South decreeing the suits of petitioner Abdul Ghani against respondents Mst. Shaheen and other respondents in terms of compromise allegedly signed by the parties out of the Court was set aside consequently both suits were remanded to the trial Court for disposal according to law.

2. Brief facts of the case are that petitioner/plaintiff Abdul Ghani filed Suit No.1091 of 1990 against Ghulam Muhammad and two others for declaration and injunction while Suit No.1275 of 1990 was tiled by Abdul Ghani for mandatory and prohibitory injunction against respondent Ghulam Muhammad and 15 others when both suits were in respect of premises No.G-1, Plot No.MIR-1/92, Katchi Gall No.3 Jodia Bazar, Karachi in Suit No.1091/90 all three respondents/defendants gave statements before the Court that they were having no concern with the suit property while Suit No.1275/90 was contested by the parties. On 12-5-1993 applications under section 151, C.P.C. were moved in both the suits which were signed by learned counsel for respondent No.1 and learned counsel for respondent Abdul Rashid and Mst. Haleema. In the said application it was prayed that the suits be disposed of as the parties have patched up out of the Court and have signed such agreement. Photocopy of the same was annexed with the application. Trial Court in view of said application decreed both the suits in terms of compromise. The respondent Mst. Shaheen preferred Civil Revision No.66 of 1995 against Abdul Ghani and fifteen others and also filed Civil Revision No.67 of 1995 against Abdul Ghani and three others in the High Court of Sindh at Karachi which revisions were heard by learned Single Judge and were allowed vide impugned judgment, hence these petitions.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners submitted that revision applications under section 115, C.P.C. were incompetent and not maintainable as appeal against the order, dated 12-5-1993 decreeing the suit in terms of alleged compromise, could have been filed. He has placed reliance upon Municipal Committee, Bahawalpur v. Sh. Aziz Elahi PLD 1970 SC 506. He also submitted that the compromise was entered into between the parties on the basis of which order, dated 12-5-1993 was passed by learned Single Civil Judge decreeing the suit of the petitioner/plaintiff. He also submitted that the respondent Mst. Shaheen could have filed an application under section 12(2), C.P.C. for setting aside the decree in case fraud was practised upon the Courts.

5. Learned counsel for the respondents submitted that suit was decreed by the Senior Civil Judge on an application

could be treated as applications under section 12(2), C.P.C. He also submitted that impugned order passed by learned Single Judge of the High Court is legal and proper as no agreement for the purpose of compromise was entered into between the parties and the agreement so filed was substituted in place of an agreement which was actually entered into by the parties. He further submitted that learned Single Judge of the High Court has attended to all submissions of the learned counsel for the petitioner and there being no substantial question of law of public importance involved in these petitions for grant of leave, hence no interference is called for by this Court.

6. We do not find merit and substance in the submissions of the learned counsel for the petitioners.

7. There is no cavil with the proposition that when an appeal lies revision would not lie. However, the facts of the instant case are quite different and distinguishable to the case cited by learned counsel for the petitioner, therefore, same would not be of any assistance to the petitioner's case. In fact learned Single Judge has carefully considered the record of the case minutely and has arrived at correct decision with the following observations:--

"The perusal of record shows that the document annexed with both applications was allegedly signed by applicant and respondent No.1. Applicant is not party to Suit No.1091 of 1990. Mr. Abdul Sattar Khatri was engaged as counsel for respondent Abdul Rashid and Mst. Haleema in Suit No.1275 of 1990 and he was not engaged as counsel for applicant. The applicant was not present before the trial Court on 12-5-1993 as is evident from the record and impugned orders. Admittedly no notice was issued by the trial Court to applicant in respect of applications under section 151, C.P.C. dated 12-5-1993, thus it is crystal clear that orders were passed without notice to applicant at her back and without her consent regarding acceptance of compromise outside the Court, hence the impugned order against applicant were passed in contravention of mandatory provisions of law, therefore, the same are nullity in the eye of law and not binding upon the appellant. In the case of Miss Reeta (ibid) it is held by a D.B. of this Court that no period of limitation will run for challenging the orders which have been passed in violation of mandatory provisions of law.

The further perusal of both the applications under section 151, C.P.C. moved before the trial Court shows that word "agreement" is written in both the applications, whereas the document presently annexed with the applications under section 151, C.P.C. is titled as "settlement/undertaking/ agreement". The certified true copy of original agreement between the parties obtained by applicant from other Courts in other matters has been produced, which shows that the document actually bear the title "agreement". Thus, the contention of learned counsel that the document annexed with applications under section 151, C.P.C. has been substituted has some force. On the original order passed in Suit No.1275 of 1990 there is cutting in the date of order and under the signature of the Presiding Officer year is mentioned as 1994.

The respondent No.1 has filed Suit No.684 of 1993 on 30-10-1993 before this Court for specific performance of the very document which has been challenged by the applicant to be forged one. If this very document had been made rule of Court in suits bearing Nos.1091 and 1275 of 1990, the respondent No.1 would not have filed Suit No.684 of 1993 on 30-10-1993 for specific performance of the document in written statement filed by applicant on 13-1-1994 in Suit No.684 of 1993 the applicant was specifically mentioned that Suits Nos.1091 and 1275 of 1990 are pending. If Suits Nos.1091 and 1275 of 1990 had been decided on 12-5-1993, the applicant would have not mentioned about the pendency of suits in the written statement of Suit No.684 of 1993 that these suits are pending. Had the plea of applicant in written statement of Suit No.684 of 1993 regarding pendency of Suits Nos.1091 and 1275 of 1990 been incorrect the respondent No.1 or any other person appearing on behalf of him would have immediately raised objection and he would have produced certified copies of order in both suits before this Court. No application under Order XXIII, rule 3, C.P.C. was moved before the trial Court for decreeing the suit in terms of compromise, hence contention of learned counsel for applicant that parties did not desire to make the compromise made by them outside the Court as rule of the Court appears to be plausible. Apparently both the properties i.e. G-II and G-III in respect of which the impugned orders have been passed belong to applicant she was not party to Suit No.1091 of 1990 and she had not engaged Mr. Abdul Sattar Khatri as counsel in Suit No.1275 of 1990 who submitted compromise application. The applicant was not present before the Court on 12-5-1993 and impugned orders were passed in her absence, hence they are nullity in the eye of law and appears to have been passed in back date. Thus, no period of limitation would run for challenging the said order."

The above observations and finding would indicate that the respondent was not party to the Suit No.1091 of 1990 and she had no knowledge and was not present before the Court on 12-5-1993 and no notice of application under section 151, C.P.C. was given to her and order, dated 12-5-1993 was passed behind her back and without consent in respect of the alleged compromise out of the Court and the said agreement, if made and on the basis of which if case stood disposed of in favour of said plaintiff Abdul Ghani on 12-5-1993 he would not have filed Suit No.684 of 1993 on 30-10-1993 and would have not stated in the written statement filed on 13-1-1994 in suit No.684 of 1993 stating therein that suits Nos.1091 and 1275 of 1990 were pending. On perusal of evidence record would show that fraud and misrepresentation having been practised upon the Court in obtaining order dated 12-5-1993 decree^d the suit of the respondent which was passed on an application C under section 151, C.P.C. hence the said c not appealable, hence revisions were competent.

8. In view of above reasoning we are of the opinion that the impugned order does not suffer from any infirmity considering also that no substantial question of law of public importance is involved, cc petitions have no merit, hence leave to appeal is declined and the petitions are dismissed.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No.....*4758*..... of 20 *21*

Abdul Kabir

Appellant/Petitioner

Versus

D.P.O. Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner:

Counsel

*Mohammad Javed Khan
Advocate Supreme Court
of Pakistan at ~~Peshawar~~
*Peshawar**

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *27-7-2021* at *9:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No.....*4758*..... of 20 *21*

Abdul Kabir

Appellant/Petitioner

Versus

P.P.O, KP& Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner

*Abdul Kabir (P.P.O) S/o
Abdul Jalil R/o Gandigan
Tehsil Dir Distt. Dir upper*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *27-7-2021* at *9:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Peshawar

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

Regd
No.

TB Swat

APPEAL No. 4758 of 20 21

Abdul Kabir

Appellant/Petitioner

Versus

PPO Peshawar

RESPONDENT(S)

Resp No 2 Deputy Inspector of Police
Notice to Appellant/Petitioner Regional Police officer
(RPO) Makand Region
Swat

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 4-10-22 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at camp court
Swat

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *Regg*

TR Swat

APPEAL No. *4758* of 20*24*.

Abdul Kabir

Appellant/Petitioner

Versus

PPO Pesh

RESPONDENT(S)

Notice to Appellant/Petitioner *Abdul Kabir (KPO) S/O*
Abdul Jalil R/O Gandigar Teh Dir
DIST Dir UPPER

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *6-6-22* at *8:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at camp court
Swat

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. *Lead*

TE Swat

APPEAL No. *4758* of 20 *21*

Abdul Kabir

Appellant/Petitioner

Versus

PPO Pesh

RESPONDENT(S)

Notice to Appellant/Petitioner *Counsel Mohammad Javed Khan*

(Adv)

*Supreme Court of Pakistan
Swat*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *6-6-22* at *8:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*at camp court
Swat*

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

TB Swat

No.

4758

21

APPEAL No. of 20 ..

Abdul Kabir

Appellant/Petitioner

Versus

PPO Pesh

RESPONDENT(S)

Counsel Muhammad Javed Khan

Notice to Appellant/Petitioner

(Adv)

Supreme Court of Pakistan
Swat

Take notice that your appeal has been fixed for Preliminary hearing, replication/affidavit/counter affidavit/record/arguments/order before this Tribunal on at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

At Camp Court

Swat

[Signature]

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No *Recd*

APPEAL No.....

4758

TR Swat
of 20
21

Abdul Kabir

Appellant/Petitioner

Versus

PPO Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner.....

Abdul Kabir (KPO) S/O
Abdul Jalil R/O Gandigar Teh Dir
DIST Dir UPPER

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on..... at.....

6-6-22 *8:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at camp court
Swat

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.